IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of James M. Etkin

Serial No. 09/740,371                               Examiner Kelly Scaggs Campen
Confirmation No. 4946                                       Group 3624

Filed: December 19, 2000

For:     Matching Program and System for Corporate Meeting Planners and Hospitality Providers

<div align="center">APPLICANT'S APPEAL BRIEF</div>

Respectfully submitted,

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(i) **Real Party in Interest**

The real party in interest is MPBid, Inc. ("MPBid") having an office at 2000 S.W. 30th Avenue, Pembroke Park, FL 33009. Applicant assigned all his rights to MPBid in an assignment filed on December 18, 2000 at reel/frame 011424/0252. 34 C.F.R. § 41.37(c)(1)(i).

(ii) **Related Appeals and Interferences**

None. 34 C.F.R. § 41.37(c)(1)(ii).

(iii) **Status of Claims**

The application was filed with 50 claims. Claims 1 - 9 were finally rejected in the Office Action dated April 7, 2006. Claims 10 - 50 were earlier withdrawn as being directed to non-elected inventions. See Office Action dated July 6, 2005 and the examiner's report of a telephone conversation with Applicant - MPBid's counsel on p. 3 thereof. 34 C.F.R. § 41.37(c)(1)(iii).

The final rejection of claims 1 - 9 is appealed herein.

(iv) **Status of Amendments**

Applicant - MPBid's request for reconsideration, filed May 9, 2006 after the final Office Action dated April 7, 2006, was <u>considered</u> by the Examiner. See para. 11, Advisory Office Action dated August 28, 2006. 34 C.F.R. § 41.37(c)(1)(iv).

(v) **Summary of Claimed Subject Matter 34 C.F.R. § 41.37(c)(1)(v).**

A very simplified version of MPBid's invention is a computerized method to match RFPs from MPs (meeting planners) with bids from Hotels (hotel vendors) and vice-versa. "RFPs" are request for proposals or quotes, see para. 32 "RFQ" definition. The MPBid server accepts MP RFPs, matches the RFP to a database of hotel facilities data, sends blinded RFP data (with no MP

contact data) to matching Hotels to solicit Hotel bids for usage of hotel facilities. After gathering responsive bids from Hotels, the process permits the MP to select "from a predetermined number of [Hotel] vendors" blinded bids (with no Hotel contact data), then open the selected bids, and then enable direct communications between the MP and the first selected group of Hotels with unblinded data. MPBid's claimed process then permits the MP to add new blinded Hotel bids (second selection) if the MP "cannot fulfill necessities corresponding to said requirement offer data" [MP's RFP], and re-enable the direct communications step with unblinded data. MPBid's claimed system also covers "open offers" from Hotels. From the Hotel side, it is common that Hotels know when large conventions or events are scheduled. MPBid's claimed process permits the Hotel to post unsolicited offers for utilization of hotel facilities ("gathering facilities offer data"), sending blinded Hotel offers to MPs, and having MPs post responsive RFPs. The Hotel then selects "blinded specific requirement data [responsive RFPs]" for a predetermined number of responding MPs, and enables direct communications between the Hotel and the first selected group of MPs with unblinded contact data. The system then permits the Hotel to select new blinded MP RFPs not on the first list "in the event said at least one [Hotel] vendor cannot fulfill the corresponding offer to supply hospitality facilities" and re-enable the direct communications with unblinded MP RFP data.

As explained in detail below, MPBid's process is a double blind, offer and bid, permit a blinded first bid selection, unblind the first selection and enable direct communications between MPs and Hotels, then enable a second blind bid selection, unblind the data and re-enable direct communications a second time for a "plurality of [MP RFP] meetings or events" using additional Hotel bidders. The claimed process separately describes offers and bids from both MPs and Hotels.

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The reason for the complex data exchange is due to the fact that the price of "hotel facilities" (a claimed term) from Hotel vendors varies based upon the number of rooms booked (prospective occupancy), the day of the week, the time of year (e.g., tourist season) and other occupancy impacting events during that time frame. From the MP's view, the number of rooms, size and number of meeting rooms and scope of amenities (golf, tennis, beach access, spa services, etc.)(the claimed "requirement data") is just as critical as the price per room. Several data exchanges between MPs and Hotels are employed to achieve a balance between common and competing interests of the parties, especially for special corporate events or large conventions with multiple meeting venues. The computerized method reduces sometimes harassing direct communications between MPs and Hotels by using a double blind, offer and responsive bid data exchange process before enabling direct communications with unblinded data. See ¶¶ 88, 99.

Detailed Summary of the Claimed Subject Matter

The claimed subject matter is a computerized bidding and matching method, operative over a number of computers communicatively linked to a server computer (Fig. 1A), for:

> a group of meeting planners (herein "MPs") having "requirement data" (claim 1, preamble) defined as "representing respective necessities of a plurality of meeting planners for a corresponding plurality of meetings or events."

Claim 1, preamble, Fig. 3B, paragraph 18, line 5 (herein "spec 18/5") and spec 75/2; and

> a group of hotel vendors (herein "Hotels") "furnishing hotel facilities, meeting room facilities or other hospitality facilities" (claim 1, preamble), later identified in the first "storing" step of claim 1 as "hospitality facility data."

Claim 1 ¶ b[1], Fig. 3B, spec 18/4 and 18/8.

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[1]Claim 1 is reproduced in the Appendix and includes paragraph identifiers in brackets [¶ a, ¶ b etc.] in order to quickly locate the claim elements. These paragraph identifiers ARE NOT in the official version of claim 1.

The computerized method stores the claimed "hospitality facility data" and "requirement data" in a database. Claim 1¶ b, Fig. 3B, database DB 68-70, spec 63/10. The "hospitality facility data" includes "room quantity data" (claim 1 ¶ b) which is typical in the letting of hotel rooms. "Amenity data" is also within the defined "hospitality facility data." Id.

The method gathers "requirement offer data" (RFPs) and MP contact data from a plurality of MPs (claim 1 ¶ c) and the MP "requirement data" includes "facilities requirements data." Claim 1, preamble, and claim 1 ¶ c. Thereafter, the process matches "requirement offer data with said hospitality facility data." Claim 1 ¶ d, Fig. 9 - function 250; spec 92/1-3.

The MP's RFP or "requirement data" is stripped of MP contact data ("blinded requirement data" per claim 1 ¶ e) and the blinded requirement data is presented to Hotels ("vendors associated with said hospitality facility data which match said facilities requirements data"). Claim1 ¶ e; Fig. 9 - functions 256, 257, spec 93/4.

The method then gathers "specific hospitality facility data" which includes "price data" (herein "bids") from Hotels. Claim 1 ¶ f. This Hotel bid data includes "room quantity data and amenity data" per ¶ b. The Hotel bid data is blinded (no Hotel contact data) and is presented to the inquiring MP "who supplied the requirement data". Claim 1 ¶ g, Fig. 9 -functions 268, 269; spec 95/9, 96/1.

This is the "double blind" aspect of the MPBids' system – MP-offerors and Hotel-bidders are blind to each other.

The inquiring MP then selects "blinded specific hospitality facility data [Hotel bids] from a predetermined number of [Hotel] vendors." Claim 1 ¶ h, Fig. 9 - "n bids" in functions 271, 272, spec. 97/1. The n selected Hotel bids are then unblinded to the inquiring MP and then the process

enables "direct communications with the exchange of vendor [Hotel] and planner [MP] contact data between said predetermined [n] number of vendors." Claim 1 ¶ i, Fig. 9 - function 275, spec. 98/1.

In the event that the inquiring MP "cannot fulfill necessities corresponding to said requirement offer data" (claim 1 ¶ j), the method permits a re-selection of m blinded bids by the MP and re-enabling direct communications with unblinded data to m Hotel-bidders and the inquiring MP. Claim 1, Fig. 9 - functions 277, 278, 280, spec 99/1. The m bidder list is different than the n bidder list. ¶ j.

In this manner, meeting planners who are offering facilities requirement data for meeting are not bombarded or annoyed by a large number of hotel vendors bidding on the facilities requirement data or meeting offer. In a like manner, a hotel posting a facilities offer data is not bombarded with a large number of unsolicited bids from meeting planners. From the bidders' standpoint, the system is beneficial because one or more bidders may participate in an auction or data exchange using various specific hospitality facility data (hotel bids) or specific facilities requirement data (meeting planner bids) which are "out of the normal range" or "far fetched" bids. In the event those bids are accepted by the counterpart offeror, the bidder is financial rewarded by filling up his or her facility (if the bidder is a hotel) or by fulfilling a meeting plan offer (facilities requirement data) which plan was an unlikely candidate to fulfill. For example with respect to hotels, the hotel may wish to severely discount the price of 10% of their rooms during off-season when their normal vacancy rate is 30% or higher. The hotels may wish to let those rooms at a significantly discounted price in order to keep an occupancy rate of 70% or higher during an off-season period. Meeting planners responding to this hotel offer could take advantage of this discount during non-peak seasons. If the bids are completely out of range, that is, other bids come in that are significantly better from the offeror's view point, the blinded nature of the bids shields the bidder from embarrassment and harassment. Hence, there is a significant benefit to both the offering party and the bidding party with the present system.

spec 99/8.

The claimed method also provides the same process for Hotel originated requests, that is, a double-blind offer-bid, select n blinded MP bids, unblind n MP bids, enable direct n -number of communications, and then select m blinded MP bids and re-enable m-number of communications

"in the event said at least one vendor cannot fulfill the corresponding offer to supply hospitality facilities." Claim 1 ¶ q.

Hotels can place unsolicited offers to supply "hotel facilities, meeting room facilities or other hospitality facilities"(claim 1, preamble and ¶ k) and the process gathers "facilities offer data" which includes "at least a hospitality facility feature and facility offer price data." Claim 1 ¶ k, spec. 55/1. Table 3 lists hospitality facility features.

The method presents blinded "facilities offer data" to MPs (claim 1 ¶ l) then gathers "specific facilities requirement data from a plurality of responsive meeting planners [MPs] relative to said facilities offer data." Claim 1 ¶ m, Fig. 9 - function 251, spec 92/1-3.

The Hotel-offeror is presented with blinded MP "specific facilities requirement data" (MP bids] and permits the Hotel-offeror to select n blinded MP bids. Claim 1 ¶¶ n,o, Fig. 9 - function 271, spec 97/1.

After n bids are selected (¶ o), the claimed process enables direct communications between the Hotel-offeror and n MPs with unblinded contact data. Claim 1 ¶ p, Fig. 9 - function 275, spec 98/1.

In the event the Hotel-offeror "cannot fulfill the corresponding offer to supply hospitality facilities" (claim 1 ¶ q), the process permits re-selection of m blinded MP bids and re-enabled direct communications between the Hotel-offeror and m MPs with unblinded contact data. Claim 1 ¶ q, Fig. 9 - function 280, spec 99/4.

Dependent claim 2 specifies that the initial n selection is equal to 1, 2 or 3 bids. Dependent claims 3, 4, and 7 specify process steps on certain types of computers such as on the server and on client computers. Dependent claims 5 and 8 register MP data and verify that data.

Dependent claim 6 gathers "prospective requirement data" from MPs which "prospective requirement data" is not a solid offer for a needed hospitality facilities but is a speculative offer. spec 103/6 and 104/1.

Dependent claim 9 includes a sort routine wherein "blinded data is sorted and ordered based upon predetermined criteria which includes a data characteristic of at least one from the group of room price data, location data, amenity data, total revenue data, composite rating data and date availability data."

Claims 10 - 50 were withdrawn as being directed to either a non-elected inventions. See Office Action dated July 6, 2005, pp. 1 - 2.

**(vi)** <u>**Grounds of Rejection to Be Reviewed on Appeal 34 C.F.R. § 41.37(c)(1)(vi).**</u>

The patent examiner finally rejected claims 1 - 9 in the Office Action dated April 7, 2006 (and again confirmed the rejection in the Advisory Office Action dated August 28, 2006) as being anticipated under 35 U.S.C. 102(b) by U.S. Patent No. 5,664,115 to Fraser (herein "Fraser '115") because the examiner believes "Fraser discloses a computerized bidding method for matching hospitality facility data, representing vendors furnishing hotel facilities, meeting room facilities or other hospitality facilities, with requirement data, representing respective necessities of a plurality of meeting planners for a corresponding plurality of meetings or events." Office Action dated April 7, 2006, p. 2. See also, Office Action dated July 6, 2005, p.4.

**(vii)** **Argument - 34 C.F.R. § 41.37(c)(1)(vii).**

For a claim to be anticipated, each claim element must be found in a single prior art reference. "A claim is anticipated under 35 U.S.C. § 102 'if each and every limitation is found either expressly or inherently in a single prior art reference.'" IPXL Holdings, L.L.C. v. Amazon.com, Inc., 430 F.3d 1377, 1380 (Fed. Cir. 2005)(quoting Bristol-Myers Squibb Co. v. Ben Venue Labs, Inc., 246 F.3d 1368, 1374 (Fed. Cir. 2001)). "Anticipation requires a showing that each limitation of a claim is found in a single reference, either expressly or inherently." Atofina v. Great Lakes Chem. Corp., 441 F.3d 991, 999 (Fed. Cir. 2006)(citing Perricone v. Medicis Pharm. Corp., 432 F.3d 1368, 1376 (Fed. Cir. 2005)).

"An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed in the prior art and that such existence would be recognized by persons of ordinary skill in the field of the invention." Crown Operations Int'l, LTD v. Solutia Inc., 289 F.3d 1367, 1375 (Fed. Cir. 2002), see also In re Spada, 911 F.2d 705, 708, 15 U.S.P.Q.2D 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

**A.** **Fraser '115 Does Not Operate on the Claimed "Hotel Facilities, Meeting Room Facilities or Other Hospitality Facilities" Nor Does it Operate on the Claimed MP "Requirement Data, Representing Respective Necessities of a Plurality of Meeting Planners for a Corresponding Plurality of Meetings or Events."**

MPBid's process patent is specific to matching bids to and from Hotel facilities and bids to and from MPs for facilities "requirement data ... corresponding [to a] plurality of meetings or events." Claim 1, preamble. The Hotel facilities data include "room quantity data and amenity

data." Claim 1 ¶ b. Hotel bids include "price data" (¶ f) relative to room quantity. Meetings or events have critical temporal factors (the event or meeting falls within a defined time period) as do hotel rooms (the price of a hotel room varies based upon quantity of rooms booked, and the price varies per season, per week, per day of the week, and per booked occupancy factors). Fraser '115 is a real estate matching program and process as explained by MPBid's amendment dated January 18, 2006, responsive to the Office Action dated July 6, 2005. The temporal differences between MPBid's and Fraser's process are (a) the length of time hotel rooms and meeting rooms are let (typically blocks of 24 hours); and (b) the number of days the hotel rooms are let to MPs' customers (corporations and their employees) compared to the permanent ownership transfer, without any time limits, of a real estate transaction. Also, specific hotel rooms are not let but a general class of rooms is made available to the corporate occupant. This is common knowledge in the hotel booking business. There are significant legal differences between letting a hotel or meeting room (limited right to occupy for defined, short period of time) and the permanent transfer of a bundle of real estate ownership rights (right to re-transfer, to possess without interference, to lease, to destroy or remodel and to occupy). These differences are "recognized by persons of ordinary skill in the field of the invention." <u>Crown Operations Int'l, LTD v. Solutia Inc.</u>, 289 F.3d 1367, 1375 (Fed. Cir. 2002). Such a person would be a senior MP or a Hotel sales manager with 6 - 8 years experience working with complex computer hotel booking systems.

MPBids's claimed process matches MP "offer data with hospitality facility data" (claim 1 ¶ d) wherein the hospitality facility data is earlier defined as "at least including ... room quantity data and amenity data." Claim 1 ¶ b. The hotel bids include "room quantity data" responsive to the MP's RFP for "meetings or events." Claim 1, preamble.

In Fraser '115, a specific, defined building or condominium is offered for sale.  Short term occupancies in one or more hotel rooms "room quantity data" is not described in Fraser.  The seller of the building does not carve up or change the facility subject to an RFP from a buyer. In contrast to Fraser '115, the present invention contemplates and discusses that the Hotel hospitality facility vendor offers "room quantities" (¶ b) and MPs seek to let those "room quantities" for a "plurality of meetings or events" claim 1, preamble.  The amount of rooms change and so does the price.  With respect to real estate transactions, the amount of real estate does not change, the day of the week does not change the price, the length of stay does not change the price and the seasonal time of year does not change the price.  In contrast, the price of hotel rooms changes by the day of the week, the number of rooms let ("room quantity"), the time of year, and the occupancy ratio and the price of hotel rooms is responsive to an MP RFP for "respective necessities ... corresponding [to a] plurality of meetings or events."  Claim 1 preamble, Fig.  3B, Spec 18/5; 75/2.  Therefore, in real estate transactions, it is not necessary to specify all these features <u>with each offer and each bid</u>.  In Fraser '115, the buyers do not include in their offers to buy, "facilities requirement data" (¶ c) which includes "room quantity data and amenity data" (¶ b).  In Fraser '115, buyers are not fulfilling needs for a "plurality of meetings or events."  Claim 1, preamble.

Further, Fraser '115 does not show, teach or suggest that the Hotel, a hospitality facilities vendor, sends "facilities offer data" (similar to "asking data") to a number of MPs.  Claim 1 ¶ k, spec. 55/1, and the hospitality facility features in Table 3.  These Hotel offers include room quantity and amenity data.

Fraser '115 does not show, teach or suggest gathering responsive "specific facilities requirement data" from MPs (¶ m), nor having the offering Hotel select n blinded MP responses (¶¶

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n,o), enabling n direct communications with unblinded data (¶ p), then, in the event that the Hotel "cannot fulfill the corresponding offer to supply hospitality facilities" (¶ q), permitting m blinded selections of responsive MP offers, and re-enabling m direct communications with unblinded data.

The Fraser '115 system

Fraser '115 discusses an Internet based system for buying and selling real estate. It operates on a database (col. 5, line 16, herein "l. 16") and utilizes a server (col. 4, l. 25). Once the buyer enters the Fraser system, he or she can search through the database using search criteria. Col. 6, l. 40. If the potential buyer locates one or more properties and requests additional information, the buyer must then input buyer contact data. Col. 6, l. 53. The system then evaluates and qualifies the buyer. For example, the system identifies the net worth of the buyer and matches that net worth data to the minimum purchasing requirements for the property selected by the buyer. Col. 6, l. 65. If the buyer qualifies, "the buyer information is transferred to the seller of the matching property then automatically by the system." Col. 7, l. 6. Upon receiving a prospective buyer request, the seller (or seller's brokers) engage in direct communication with the prospective buyers. Col. 7, l. 11.

A seller can also access the Fraser '115 system and request "a list of buyers who have requested further information regarding a property currently being listed on behalf of the seller." Col. 8, l. 15. "All appropriate buyer records are provided to the seller." Col. 8, l. 24.

Other portions of the Fraser '115 specification discuss the buyer search and a matching of buyers qualifications with the selected property. Col. 9, l. 3. A provisional buyer record is created. Col. 9, l. 27. The system can be automatically configured to forward the buyer's information to the seller. Col. 9, l. 34. Confirmation is sent to the buyer when the buyer's information is forwarded

to the seller. Col. 9, l. 40. The system can be configured to periodically provide information from qualified buyers to an approved seller. Col. 9, l. 45. A list of all prospective buyers associated with a particular piece of property can be sent to the seller. Col. 9, l. 55.

Fraser '115 does not discuss hotels, meeting planners (MPs), time share condo sales, fractional ownership properties, lease hold properties or real estate leases. Every instance of the word "sale" in Fraser '115 concerns real estate offered for sale (a complete transfer of ownership) or sale of a "particular business." Col. 6, l. 46.

Applicant recognizes that the Fraser '115 system is enabled as follows: "the system according to the [Fraser] invention also provides a means to match buyers and sellers while preserving the anonymity of the seller to as great a degree as possible." Col. 10, l. 15. In this manner, the role of the seller's broker is preserved.

Simply put, MPBid's process for "hotel facilities" is not the same as real estate sales data. Likewise, MPs seeking "requirement data" for a "plurality of meetings or events" is not the same as buyers of real estate. The temporal differences in the usage of hotel rooms, "hospitality facilities," "room quantity data and amenity data" and MP requirement data for a "plurality of meetings or events," on one hand, and the sale of real estate, on the other hand, are significant. Hotel rooms and meeting or event facilities are let, typically in 24 hour time blocks, for short, defined periods of time, typically a certain number of days. The purchase and sale of real estate is a long term, oftentimes permanent, transaction.

The use, in a patent claim, of specially named data makes the claim patentably distinct from prior art references. In AT&T v. Excel Communications, Inc., 172 F.3d 1352, 1354 (Fed.Cir. 1999), the court found that "the invention of the [AT&T] '184 patent calls for the addition of a data

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field into a standard message record to indicate whether a call involves a particular PIC (the "PIC indicator")." The AT&T claim included "in said message record, a primary interexchange carrier (PIC) indicator." Id. The court, in reversing the summary judgment for invalidity under 35 U.S.C. sec. 101, stated "the PIC indicator represents information about the call recipient's PIC, a useful, non-abstract result that facilitates differential billing of long-distance calls made by an IXC's subscriber." Id. at p. 1358. Effectively, the AT&T v. Excel case stands for the proposition that specially named data ("hotel facilities" and "requirement data ... [for] meetings or events") can define patentable subject matter to the person of ordinary skill in the art. Herein, that person is an experienced MP or Hotel booking sales manager.

In MPBid's case, the use of "requirement data" claim language (¶¶ b, c, d, e, etc.) for an MP's temporal need for hotel rooms for a "plurality of meetings or events" and hospitality facility data (¶¶ b, d, e, etc.), provided by "vendors furnishing hotel facilities, meeting room facilities or other hospitality facilities" establishes specially named data which has a significantly different temporal nature than data exchanged in the buying and selling of real estate (Fraser's system). The "hospitality facility data ... [includes at least] room quantity data and amenity data." ¶ b. Since Fraser '115 does not operate on MP requirement data and Hotel hospitality facility data, Fraser '115 does not anticipate MPBid's claim 1. Fraser '115 also does not anticipate dependent claim 6 relating to gathering "prospective requirement data" from MPs which "prospective requirement data" is not a solid or a formal offer to let hospitality facilities but is somewhat speculative. spec 103/6, 104/1 and "PPO" at 105/2. Nor does Fraser '115 anticipate dependent claim 9 which includes a sort routine wherein "blinded data is sorted and ordered based upon predetermined criteria which

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includes a data characteristic of at least one from the group of room price data, location data, amenity data, total revenue data, composite rating data and date availability data."

**B.      Fraser '115 Does Not Have MPBid's--Double-blind, Select n Bids, Unblind, then Re-Select m Bids, then Unblind--Process for Both MPs and Hotels**

As explained in the Summary of the Claims, MPBid's claimed process is a double blind, post offer, get responsive bids, permit a <u>blinded first</u> selection of n bids, unblind the first n selection and enable direct n communications between MPs and Hotels, then <u>re-enable the selection for m blinded bids</u>, unblinding m bids and re-enable m direct communication for a "plurality of meetings or events" using additional bidders.  The system separately claims offers and bids from both MPs and Hotels.  In summary, Fraser '115 does not, (1) gather both n and m bids from Hotels; (2) permit n selections by an inquiring MP and enable n direct communications between "vendor [Hotel] and planner [MP] [with] contact data between said predetermined [n] number of vendors" (claim 1 ¶ h, Fig.  9 - function 275, spec.  98/1); and (3) then if the n Hotel bids do not "fulfill necessities corresponding to said [MP] requirement offer data" (claim 1 ¶ j), permit a re-selection of m blinded bids by the MP and re-enabling direct communications with unblinded data to m Hotel-bidders and the inquiring MP.  Claim 1 ¶ j, Fig. 9 - functions 277, 278, 280, spec 99/1.

Fraser's system operates as follows.  "The results of this [buyer] evaluation is then recorded along with the other information provided by the prospective buyer <u>and passed along directly to the seller</u> (S110)." col.  7, l.  1 (emphasis added). "Upon receiving the prospective buyer's requests, the brokers or sellers determine which buyer to respond to based on the information provided by the prospective buyer."  col.  7, l.  11.  Fraser does not discuss blinded selection of buyer's offers by a seller.

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Fraser '115 also does not discuss blinded Hotel bids responsive to blinded MP facility requirement data. ¶ e, ¶ n. Fraser '115 does not collect, from a number of real estate sellers, bids responsive to a buyer's offer to buy real estate. Sellers in Fraser's real estate system do not bid on a singular buyer's RFP. Nor does Fraser '115 discuss, in a first instance, selection of n blinded bids, and then, in a second instance, selection of m blinded bids. Fraser '115 states: "Upon receiving the prospective buyer's requests, the brokers or sellers determine which buyer to respond to based on the information provided by the prospective buyer." col. 7, l. 11. This feature of Fraser '115 is not a first nor a second blinded bid selection.

Later, Fraser '115 states:

> According to this embodiment of the invention, once all requested property listings have been received (or if none are requested), the seller is asked at S214 whether the seller wishes to receive a list of buyers who have requested further information regarding a property currently being listed on behalf of the seller. If so, the property record(s) associated with the seller is (are) checked to determine whether any buyers have requested additional information (S215). If any such property records indicate that requests have been made, the information received from the requesting buyer is downloaded to the seller at S216.

col. 8, l. 11-22 (emphasis added).

The above passage from Fraser '115 does not discuss selection of n blind bids by the seller, then a re-selection of m blind bids with two (2) enabled direct communications between an MP-offeror and n plus m bidding Hotels.

Fraser '115 goes on to state:

> After a provisional buyer record has been created, the aforementioned evaluation process is executed at S409 to determine whether the buyer meets the seller's minimum qualification standards for each selected property. The results of this evaluation are then displayed to the prospective buyer at S410, who is then asked at S411 if it is desired to forward the buyer's information to the seller of the matching items. If not, the prospective buyer is asked whether a new search is desired at S406. On the other hand, if the prospective buyer wishes to contact the seller, the buyer's

> provisional record is ... forwarded to the appropriate seller (S414), and the buyer is
> given the option to perform a new search.

col. 9, l. 27- 44 (emphasis added).

This step in Fraser '115 is not a blinded presentation of bids from potential buyers of properties. The Fraser '115 system also does not select n blinded bids, unblind n bids, permit re-selection of m blind bids, then unblind m bids.

In fact, Fraser '115 nowhere discusses "bid" nor "blind" data exchanges. In the absence of specific reference to a blind selection of n bids, the person of ordinary skill in the art would not know how or why to (i) transmit blinded bids nor (ii) unblind bids, nor (iii) enable direct communications between offeror and multiple bidders, (iv) re-select m blinded bids, and subsequently (v) enable direct communications between offeror and multiple m bidders. The Fraser '115 system is not "[a]n anticipating reference ... [which] describe[s] the patented subject matter with sufficient clarity and detail to establish that the subject matter existed in the prior art and that such existence would be recognized by persons of ordinary skill in the field of the invention." Crown Operations Int'l, LTD v. Solutia Inc., 289 F.3d 1367, 1375 (Fed. Cir. 2002).

The purpose and objective in MPBid's novel process is to handle multiple, different rounds of bids and limit the number of direct communications between the parties because the temporal nature of "hotel facilities, meeting room facilities or other hospitality facilities" (claim 1) presents a challenge to the MP buyer, seeking a limited, multi-unit temporal product ("requirement data"). The short temporal nature of letting a hotel room, within certain larger defined temporal windows (the overall time of the meeting or event), makes the present process patentable.

Reversal of the Examiner's rejection of MPBid's process patent on the grounds that Fraser '115 anticipates MPBid's computer process claims is required.

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With respect to dependent claims 6 and 9, Fraser '115 does not discuss nor disclose the claimed "prospective requirement data" (claim 6) from MP-buyers which MP "prospective requirement data" is not a solid offer for a needed hospitality facility but a speculative offer. spec 103/6, 104/1 and 105/2. Further, Fraser '115 does not show a sort routine (claim 9) wherein "blinded data is sorted and ordered based upon predetermined criteria which includes a data characteristic of at least one from the group of room price data, location data, amenity data, total revenue data, composite rating data and date availability data."

It is respectfully requested that the Board reverse the Examiner's finding that Fraser '115 anticipates these claims and allow the claims as being patentable.

Claim Appendix

The claims involved in this appeal are reproduced below. Claim 1 has been annotated with paragraph identifiers [¶ a, b, c, etc.] to provide an easily reference to MPBid's Brief. These paragraph identifiers are NOT present in the official version of claim 1 on file with the Patent and Trademark Office.

<u>Claims</u>

1. (previously amended) A computerized bidding method for matching hospitality facility data, representing vendors furnishing hotel facilities, meeting room facilities or other hospitality facilities, with requirement data, representing respective necessities of a plurality of meeting planners for a corresponding plurality of meetings or events, said bidding and matching method utilizing a client-server network with at least one server and a plurality of client computer systems, the method comprising the steps of:

[¶ a]    as a computerized method:

[¶ b]    storing said hospitality facility data and said requirement data in a database on said at least one server, said hospitality facility data at least including vendor contact data, room quantity data and amenity data;

[¶ c]    gathering requirement offer data and planner contact data from said plurality of meeting planners, the gathered requirement offer data including facilities requirements data;

[¶ d]    matching requirement offer data with said hospitality facility data;

[¶ e]    presenting blinded requirement data, without revealing the identity of the corresponding meeting planner who supplied said requirement offer data, to vendors associated with said hospitality facility data which match said facilities requirements data;

[¶ f]  gathering specific hospitality facility data from said vendors relative to said presented blinded requirement data including price data;

[¶ g]  presenting, to said corresponding meeting planner who supplied said requirement data, blinded specific hospitality facility data responsive to said requirement offer data;

[¶ h]  permitting said corresponding meeting planner to select blinded specific hospitality facility data from a predetermined number of vendors;

[¶ i]  enabling direct communications with the exchange of vendor and planner contact data between said predetermined number of vendors and said corresponding meeting planner supplying said requirement offer data;

[¶ j]  in the event said corresponding meeting planner cannot fulfill necessities corresponding to said requirement offer data, repeating the permitting selection step while excluding at least one of said predetermined number of vendors and repeating the enabling communications step;

[¶ k]  gathering facilities offer data, representing at least one offer by a vendor to supply hospitality facilities, and storing said facilities offer data in said database, said facilities offer data including at least a hospitality facility feature and facility offer price data;

[¶ l]  presenting blinded facilities offer data to one or more meeting planners;

[¶ m]  gathering specific facilities requirement data from a plurality of responsive meeting planners relative to said facilities offer data;

[¶ n]  presenting, to said at least one vendor supplying said facilities offer data, blinded specific requirement data;

[¶ o]  permitting said at least one vendor to select blinded specific requirement data representing a further predetermined number of said responsive meeting planners,

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[¶ p]   enabling direct communications with the exchange of planner contact data between said further predetermined number of said responsive meeting planners and vendor contact data of said at least one vendor supplying said facilities offer data and,

[¶ q]   in the event said at least one vendor cannot fulfill the corresponding offer to supply hospitality facilities, repeating said permitting selection step and presenting said blinded facilities offer data step to said one vendor while excluding at least one of said further predetermined number of responsive meeting planners and repeating the enabling of communications step between said meeting planners and said one vendor.

2. (original)   A method as claimed in claim 1 wherein, in said permitting selection step by said corresponding planner, said predetermined number of vendors selected by said corresponding planner is one from the group of one, two and three;  and wherein said further predetermined number of said responsive meeting planners selected by said at least one vendor is one from the group of one, two and three .

3. (original)   A method as claimed in claim 2 wherein the steps of gathering involve gathering from one or more of said plurality of client computer systems.

4. (original)   A method as claimed in claim 3 wherein said plurality of client computer systems includes a plurality of vendor enabled client computer systems, the method including the step of, at said at least one server:

communicating with said plurality of vendor enabled client computer systems relative to presenting blinded requirement data; gathering specific hospitality facility data;  enabling direct communications with said meeting planner supplying said requirement data;  gathering facilities

offer data; presenting said blinded specific requirement data; and enabling direct communications with said further plurality of meeting planners.

5. (original)    A method as claimed in claim 1 including the step of registering said plurality of meeting planners into said database is independent of said gathering requirement offer data step.

6. (original)    A method as claimed in claim 5 including the step of gathering prospective requirement offer data from at least one meeting planner; matching said prospective requirement offer data with said hospitality data; presenting blinded prospective requirement offer data to vendors associated with hospitality data which match said prospective requirement offer data thereby prompting the matched vendors and said at least one meeting planner to engage in the steps of gathering requirement offer data and gathering facilities offer data.

7. (original)    A method as claimed in claim 6 wherein said plurality of client computer systems includes a plurality of planner enabled client computer systems, the method including the step of, at said at least one server:

communicating with said plurality of planner enabled client computer systems relative to gathering requirement offer data, gathering said planner contact data; presenting blinded specific hospitality data; and permitting selection of said predetermined number of vendors.

8. (original)    A method as claimed in claim 7 including the step of verifying said planner contact data.

9. (original)    A method as claimed in claim 1 wherein prior to said steps of presenting said blinded specific hospitality facility data to said corresponding meeting planner and presenting said blinded specific requirement data to said at least one vendor, said blinded data is sorted and ordered based upon predetermined criteria which includes a data characteristic of at least one from the group

of room price data, location data, amenity data, total revenue data, composite rating data and date availability data.

Respectfully submitted,

Date: _Nov. 1, 2006 _____                By:     /Robert C. Kain Jr./ _____
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Certificate of E-Filing

I hereby certify that this correspondence is being e-filed with the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 1, 2006.

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